

February 14, 2013

By Electronic Filing
Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A35
445 Twelfth Street, SW
Washington, DC 20554

Re: Comments of C-SPAN Radio
MB Docket No. 07-294, FCC 12-166
Promoting Diversification of Ownership in the Broadcasting Services

Dear Ms. Dortch:

C-SPAN Radio¹ submits these Comments in response to the *Sixth Further Notice of Proposed Rulemaking* of the above-referenced proceeding (released January 3, 2013), proposing, among other things, changes to the filing requirements of the FCC's noncommercial educational Ownership Report Form 323-E.

We agree with others in the noncommercial television and radio arena who have participated in this proceeding² that the Commission would save itself and its

¹ C-SPAN Radio describes WCSP-FM, a non-commercial educational radio broadcast station licensed to serve the Washington, DC metropolitan area. C-SPAN Radio is owned and operated by National Cable Satellite Corporation, d/b/a C-SPAN ("NCSC"), a non-profit educational corporation in the District of Columbia. NCSC owns and operates three full time public affairs television programming services available via cable television and satellite devoted entirely to information and public affairs, including the live gavel-to-gavel coverage of the proceedings of the U.S. House of Representatives (on C-SPAN), and of the U.S. Senate (on C-SPAN2) and a variety of other events at public fora around the country and the world on those services and on C-SPAN3, a fulltime digital-only service.

² See: Joint Comments of Public Television and Radio Licensees (Jun. 26, 2009), and Letter from Rishi Hingoraney, Director of Public Policy & Legislation, NPR, to Marlene H. Dortch, Secretary, FCC (Jan. 30, 2013).

noncommercial licensees a great deal of angst by abandoning its attempt to apply the concept of “ownership” to the non-profit and governmental organizations who operate noncommercial broadcast stations. The ultimate goal of promoting diversity of broadcast ownership is a laudable one, but the Commission will not accomplish its goal by, in effect, trying to measure distance with a thermometer, especially when the ‘distance’ doesn’t even matter.

The ownership of a commercial broadcast property can effectively be determined by collecting the names and equity positions of those who invested their personal or corporate assets in it. The measurement of each entity’s ownership is made in dollars or dollar equivalents. You can draw many useful conclusions about the state of commercial broadcast ownership with such a measure and then use it to inform policy decisions.

The same is not true of noncommercial broadcast properties. The Commission can not conduct a similar assessment of them because its measuring stick of ownership -- dollars -- is irrelevant to them, and, indeed, so is the very concept of ownership itself. As others have noted, the directors and officers of the non-profit organizations holding FCC licenses are largely volunteers and paid staff of those organizations, none of whom have an economic interest in the broadcast stations. Indeed, it is an essential characteristic and a legal requirement of non-profits organized under state law that they not transfer anything of value to their managers. The District of Columbia Non-profit Corporation Act of 2010 is a typical state law on this point. It provides that “... a non-profit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, delegates, members of a designated body, or

officers.”³ If a non-profit organization holding a broadcast license hopes to remain compliant with its state law, it will have nothing useful to report on the Form 323-E ownership report because there is no ownership to express.

A handful of states (*e.g.*, Kansas, Pennsylvania, Michigan and Wisconsin) give non-profit corporations the option to issue stock, which might suggest that it is legally possible to have an ownership interest in a charity. But it is not so. Probably the best-known stock-issuing charity is the Green Bay Packers, which has 100,000 shareholders and last year offered another 250,000 shares to raise funds to renovate Lambeau Field. But even there, the Packers advise potential shareholders they shouldn’t expect “to make a profit or to receive a dividend or tax deduction *or any other economic benefits*” (emphasis supplied) from the stock.⁴ This is good legal advice because despite a share purchaser’s expectation that he will become a part owner of his favorite team, Wisconsin corporation law prohibits the Packers and all other non-profit organizations from conferring any ownership benefit to anyone. The other states permitting the issuance of stock by non-profit organizations have the same rule.

All or nearly all of the non-profits holding broadcast licenses are also exempt from federal tax as charitable or educational organizations pursuant to IRC § 501(c)(3). Such organizations “must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization’s net earnings may inure to the benefit of any private shareholder or individual.” Thus, federal tax law bolsters the general state

³ District of Columbia Non-Profit Corporation Act § 29-404.40(a)

law rule that non-profit organizations may not have any of the characteristics of a privately owned for-profit corporation.

We concede that a non-profit organization's directors, trustees or officers may be said to have an "attributable interest" in a broadcast station, but that is only a concept used to satisfy the generally held and ordinarily sensible view that everything of value in our economy must be owned by somebody, ultimately. But as only a moment's reflection reveals, that view does not apply to the non-profit sector. That most people are surprised to learn even the large non-profit organizations are not owned by anybody does not change that legal fact. At most, the concept of an "attributable interest" is useful to describe a management responsibility, or more precisely in the charitable world, a stewardship role of the directors and officers. Or, more practically, it describes those who control the organization. But it most certainly does not describe the owners. This distinction is important because the Commission is interested in ownership that can be transferred or created in some way to encourage minority and gender diversity. It should not be led away from that goal by confusing stewards with owners. The former own nothing and can convey nothing; the latter own everything and are the true target of the Commission's attention.

The irrelevance of the concept of ownership to noncommercial broadcast licensees means the Commission's proposal to require the reporting of the CORES FRNs of their officers and directors is also irrelevant. Given that irrelevance to both the


⁴ Packers Stock Sale to Begin December 6. <http://www.packers.com/news-and-events/article-1/Packers-Stock-Sale-to-Begin-December-6/> (last visited February 13, 2013).

concept of ownership and to the ultimate goal of more diverse ownership, the proposed reporting requirement becomes an unnecessary burden as well. It is one thing to intrude upon the privacy of volunteers and staff by requiring them to hand over their social security numbers to accomplish a social good; it is quite another to ask them to do so for no purpose at all.

For the foregoing reasons, C-SPAN Radio urges the Commission to not make any changes to Form 323-E.

Respectfully submitted,

C-SPAN Radio

By: 

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